



CPR Institute for Dispute Resolution

File Number:	CPR 0203
Date of Commencement:	February 4, 2002
Domain Name:	3GLABS.COM
Registrar:	Register.com, Inc.

COMPLAINANT

Name: 3G LAB Ltd.
Address: Matrix House, Cambridge Business Park, Cambridge CB4 0HH, England
Telephone: +44 1223 478900
Fax: +44 1223 478901
E-Mail: david.holland@3glab.com

vs.

RESPONDENT

Name: Jim Balman
Address: 6444 E. Sandra Terrace, Scottsdale, AZ 85254, USA
Telephone: (480) 991-5289
Fax: n/a
E-Mail: jim_balman@yahoo.com

Before Thomas M. Pitegoff, Esq., Arbitrator

PROCEDURAL HISTORY

The Complaint was filed with CPR Institute for Dispute Resolution (CPR) on January 31, 2002. After review for administrative compliance, CPR transmitted a copy of the Complaint to Respondent on February 4, 2002. The Respondent did not file a Response. On February 28, 2002, CPR appointed me as Arbitrator pursuant to the Uniform Domain Name Dispute Resolution Policy (UDRP) and the Rules for UDRP (the "Rules") promulgated by the Internet Corporation for Domain Names and Numbers (ICANN). Out of an abundance of caution, I did a "whois" search of the disputed domain name on register.com to see their listed contact person for 3glabs.com. I found the following information listed as having been updated on February 4, 2002, the same date that CPR had transmitted a copy of the Complaint to Respondent at the address noted above: Jim Balman, 2545 Lake Ave., Wilmette, IL 60091, Phone: 847-256-2384, Email: jim@balman.com. At my request, the CPR Administrator transmitted a second copy of the Complaint to Respondent at this address on March 4, 2002. Respondent replied by e-mail March

10, 2002, thanking the Administrator for his attempts to reach him, acknowledging his receipt of the e-mail and mailed documents, and stating "I do not plan on responding to this complaint as I find it without merit. Thank you."

Upon the written submitted record including the Complaint and its attachments, I find as follows:

FINDINGS

Respondent's registered domain name, 3GLABS.COM, was registered with Register.com, Inc., on October 14, 1999. In registering the name with Register.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 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 has rights in the mark "3G LAB", which was registered to Complainant in England and the European Community on May 2, 2000. (See www.patent.gov.uk.)

Complainant alleges that the domain name 3GLABS.COM is identical to Complainant's registered mark. For purposes of determining identity or confusing similarity, the .com extension is disregarded, as is the addition of the letter "S" to form the plural of the word LAB. Therefore, I 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 3GLABS.COM. In support of this allegation, Complainant notes that the two name-servers listed for the 3glabs.com domain do not return an A record for "www.3glabs.com" or 3glabs.com", indicating that the domain has no web server; and they do not return any MX records for "3glabs.com", indicating that e-mail is not received at that domain. Complainant contends that Respondent has not used or made preparations to use the 3GLABS.COM domain name.

In fact, the domain name 3GLABS.COM does not resolve to an active web site.

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 presented no evidence refuting Complainant's allegations and has made no allegation that Respondent is using the domain name in connection with any offering of goods or services. Respondent has not demonstrated that it has been commonly known by the domain name, nor that Respondent is making legitimate noncommercial or fair use of the domain name.

I therefore conclude that Respondent does not have any rights or legitimate interests 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.

Complainant alleges that the 3GLABS.COM domain name is listed for sale at various web sites, including www.ctpassport.com and www.afternic.com, and that the listing at www.afternic.com requires a minimum bid of \$50,000. Complainant alleges that this is evidence that the domain name was acquired with the primary aim of selling it, which constitutes registration in bad faith.

In the absence of any response from Respondent refuting these allegations, I agree with Complainant. Advertising the domain name for sale at a minimum bid of \$50,000, an amount far in excess of the direct cost of the domain name registration, is evidence that the Respondent has registered the domain name primarily for the purpose of transferring the registration to the Complainant or a competitor of the Complainant.

Complainant registered the domain name 3GLAB.COM on October 15, 1999, one day after Respondent registered the domain name 3GLABS.COM. Complainant registered the mark “3G LAB” on May 2, 2000. Because Respondent registered the domain name before Complainant registered either the domain name or the trademark, it is not likely that Respondent intended to transfer the domain name specifically to Complainant. However, “3G” is a commonly-used term in the telecommunications business, and it is likely that Respondent intended to transfer the registration to any company for whom the term “3G” is important, including Complainant or a competitor of Complainant.

I conclude that Respondent registered and used the domain name in bad faith, as that term is defined in the ICANN policy.

CONCLUSION

In light of the 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 Complainant.

REMEDY

Complainant’s request to transfer the domain name 3GLABS.COM to Complainant is GRANTED. The domain name shall be transferred to Complainant, 3G LAB Ltd.

March 11, 2002

Thomas M. Pitegoff, Esq.

Date