



CPR Institute for Dispute Resolution

COMPLAINANT

GREG LLOYD SMITH

Kestrel House

Ornos Beach

84600 Mykonos

GREECE

Tel: 00 30 289 027284

Email: md@ieqplc.com

vs.

File Number: CPR 0207

Date of Commencement: February 28, 2002

Domain Name(s): greglloydsmith.com

Registrar: directNIC.com

Arbitrator: Sandra A. Sellers

RESPONDENT

LUCKY ALLAN SHORT

45 Ioana Court

Govan

Glasgow

SCOTLAND

Tel: not known

E-mail: glloydsmith@hotmail.com;

Luckyallanshort@hotmail.com

Before Sandra A. Sellers, Arbitrator

PROCEDURAL HISTORY

The Complaint was filed with CPR on February 27, 2002, and, after review for administrative compliance, served on the Respondent on February 28, 2002. The Respondent filed an informal Response via email on March 1, 2002. 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).

FINDINGS

The email submitted by Respondent on March 1, 2002 does not constitute a true Response because it does not comply with the requirements of UDRP Rule 5. It therefore will not be accepted or considered.

Respondent's registered domain name, greglloydsmith.com, was registered with Intercosmos Media Group, Inc. dba directNIC.com on February 10, 2002. 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 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.

IDENTITY/CONFUSING SIMILARITY

Complainant alleges that the domain name, greglloydsmith.com, is identical or confusingly similar to Complainant's actual name, Greg Lloyd Smith.

However, Complainant makes no attempt to prove that "Respondent's domain name is identical or confusingly similar *to a trademark or service mark in which complainant has rights*," as required by UDRP Rule 3(b)(viii). Indeed, in the complaint, Complainant states that this requirement is "not applicable" (Complaint outline, Paragraph 5).

The threshold question, therefore, is whether this claim – based solely on a personal name, without attempt to show that the name constitutes a trademark or service mark in which complainant has rights -- is cognizable under the UDRP.

To support a claim under the UDRP, a personal name must constitute a trademark or service mark in which the complainant has rights; a personal name, without more, does not qualify. *See* Report of the Second WIPO Internet Domain Name Process, "the Recognition of Rights and the Use of Names in the Internet Domain Name System", September 3, 2001 ("the 2nd WIPO Report"), at ¶¶ 181-204. Here, the Complainant has made no effort to prove that the name is a trademark or service mark in which the complainant has rights, despite bearing the burden of proof on each element. Complainant has dismissed UDRP Rule 3(b)(viii) as "not applicable." None of the exhibits to the complaint shows Complainant's use of the name. Accordingly, I find that Complainant has not proven that the name is a trademark or service mark in which complainant has rights.

Since Complainant has not proven the first of the required elements, I need not reach a decision with respect to the second and third elements.

CONCLUSION

In light of my findings above that the Complainant has not proven that his name is a trademark or service mark in which complainant has rights, I find in favor of the RESPONDENT.

REMEDY

Complainant's request to transfer the domain name greglloydsmith.com is hereby DENIED.

Sandra A. Sellers

March 21, 2002