

CPR Institute for Dispute Resolution

COMPLAINANT

Smarttree Ltd.
(former Human Resources Technologies Ltd.)
832 The White House, Belvedere Road,
London SE1 8YT, GB
Telephone: +442076811895
Fax: +442076811895
E-mail: andrea.ionescu@smarttree.biz

File Number: CPR0232

Date of Commencement: December 20, 2002

Domain Name(s): "smarttree.com"

Registrar: OpenSRS c/o Tucows.com Inc.

vs.

Arbitrator: avv. Luca Pusateri

RESPONDENT

Cristian Ghica
9 Brinduselor Str. BIG4, Sc.B, Ap. 41
Bucharest 3 Romania
Telephone: +40722459001
Fax: NA
E-mail: cristian_2002002@yahoo.com

Before avv. Luca Pusateri, Arbitrator

PROCEDURAL HISTORY

The Complaint was filed with CPR on December 20, 2002 and, after review for administrative compliance, served on the Respondent on December 20, 2002. The Respondent did file a Response on January 6, 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). Upon the written submitted record including the complaint and the response, I find as follows:

FINDINGS

Respondent's registered domain name, "smarttree.com", was registered with Tucows Inc. on July 12, 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 "smarttree.com" is identical or confusingly similar to Complainant's trademark, "smarttree", which applies to the company activity in the development of web-based human resources management tools.

Complainant has submitted evidence that it has filed a registration for the trademark "Smarttree" with the Romanian Authority (called the State Office for Inventions and Trademarks) on May 29, 2002. Complainant has also submitted evidence that on June 18, 2002 was reserved with the Romanian Trade Registry the name of the Romanian company "Smarttree Romania".

Notwithstanding all the above Repondent has explicitly recognized that the domain name at issue is identical or confusingly similar to Complainant's trademark.

I therefore 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 interests with respect to the domain name at issue. In support for this allegation, Complainant notes that the Respondent has registered the domain name at issue when was pending the demand of registration for the same domain name filed by the Complainant. Complainant notes also that the Respondent did not register a company, or a foundation, or a not-profit organization in order to undertake its activities. Complainant notes that Respondent never applied for registering the trademark "Smartree" and also that Respondent could have easily proven a legitimate interest in using the Smartree name for a non profit activity if he had accepted the Complainant's offer to exchange the .com domain with the .org domain. On the other hand Respondent, who is a student of geography and ecology and is undertaking with some other colleagues a project to encourage people in helping our planet by planting trees, notes that has refused to exchange the domain at issue with Complainant's domain "smartree.org" because, with the growth of commercial sites on the web, many surfers assume that all sites must end in .com, and because famous project or organizations are following the same strategy.

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.

According to the assumptions underlined by the Respondent, who has started to use the website on the domain "smartree.com" on August 6, 2002, I find that he was using the domain name in connection with a bona fide offering of services well before the notice of the dispute. Considered that Respondent is not a competitor of the Complainant I do not find that he is making a noncommercial use of the domain name with the intent to divert consumers or to tarnish the trademark at issue.

I would also stress that the allegations of the Complainant are incorrect considered that anyone, who registers for first a certain domain name, may undertake on the web any fair activity without the necessity of registering a trademark identical to the domain name or the necessity of setting up a foundation or a not profit organization.

I therefore conclude that Respondent 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 and use, Complainant notes only that Respondent has made an intentional attempt to attract and entice users to his website by creating a likeness of confusing similarity. Complainant also notes that the striking time coincidence of the registration in favor of Respondent when Complainant had already filed the request of registration for the same domain, should be evidence of a registration in bad faith.

Respondent notes that there are no circumstances indicating that he has registered the domain name primarily for the purpose of selling, renting or transferring the domain name. Accordingly, the correspondence between himself and Smartree Romania clearly illustrates that he did not have any intent to sell, rent or transfer the domain name in question. Respondent notes that he is not a competitor of Smartree Ltd and that he has not attempted to attract any commercial gain through his website. His non-commercial fair use of the website is to send a message to internet users interested by Respondent's plantation program. Respondent asserts that there is no likelihood for confusion because It is reasonable to assume that any rational person, that visits his site, would have no doubt that the website in question is not sponsored, endorsed, or affiliated with Smartree Ltd in any way. Finally Respondent notes that he has not attempted to create a likelihood of confusion with Smartree Ltd because he has clearly specified in the web site that "*SmarTree.com is run as a non-profit project by the private person Cristian Ghica*".

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.

Bearing in mind that the indications of bad faith described by Paragraph 4(b) of the UDRP are not exhaustive and therefore Complainant could provide other evidences of the bad faith, nevertheless I do not agree with the assumption of the Complainant that the mere coincidence between the timing of the request of the domain by Complainant and the time of

registration of the domain by Respondent is evidence of either the bad faith in registering and in using the domain name.

I therefore conclude that Respondent did not register and use the domain name in bad faith, as that term is defined in the ICANN Policy.

CONCLUSION

In light of my findings above that (a) the registered domain name is identical or confusingly similar to Complainant's protected mark; (b) Respondent does have rights or legitimate interests with respect to the domain name at issue; and (c) Respondent did not register and use the domain name in bad faith, as that term is defined in the ICANN Policy, I find in favor of the Respondent.

REMEDY

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

Signature of Arbitrator

Date