



CPR Institute for Dispute Resolution

File Number: CPR 0508
Date of Commencement: June 21, 2005
Domain Name: MUDGIRLIES.COM
Registrar: eNom, Inc.

COMPLAINANT

Name: Mudd (USA), LLC
Address: 1407 Broadway, Suite 2004, New York, NY 10018
Tel: 212-609-6800
Fax: 212-935-1304
E-mail: gfechter@mccarter.com

vs.

RESPONDENT

Name: All Pro Register
Address: 6191 Orange Drive, Suite 6177, Davie, FL 33314
Telephone: 954-689-8339
Fax: 954-689-8340
E-mail: webmaster@allproregister.com

Before Thomas M. Pitegoff, Esq., Arbitrator

PROCEDURAL HISTORY

The Complaint was filed with CPR Institute for Dispute Resolution (CPR) on June 21, 2005. After review for administrative compliance, CPR served the Complaint on Respondent. On July 14, 2005, CPR notified Respondent that Respondent failed to file a timely Response. Also on July 14, 2005, 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).

ICANN Rule 5(e) states "If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint."

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

FINDINGS

Respondent's domain name MUDGIRLIES.COM was registered with eNom, Inc. on March 23, 2005. In registering the name with eNom, Inc., an ICANN accredited registrar, Respondent agreed to submit to this forum to resolve any dispute concerning the domain names, 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

UDRP Paragraph 4(a)(i) calls for a finding that Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

Complainant sells a variety of goods worldwide under the MUDD trademark. The trademark MUDD was registered with the United States Patent and Trademark Office on August 6, 1996, under Registration No. 1992148 for use in connection with jeans, overalls, skirts, shorts and dresses in International Class 25, claiming first use in commerce at least as early as September 1995. Complainant alleges that Complainant and its predecessor have used the trademark MUDD continuously since as early as September 1995 in connection with woman's and girls' apparel and accessories and other goods. The trademark MUDD was registered in the U.S. under Registration No. 2537262 in International Classes 9, 14, 18, 25 and 26 for use in connection with a variety of other goods, with dates of first use in 1998 and 1999. Complainant also uses the MUDD mark abroad and has numerous foreign registrations for this trademark.

Complainant sells MUDD goods through its website MUDDJEANS.COM.

Complainant alleges that Respondent's domain name MUDGIRLIES.COM is identical and confusingly similar to Complainant's domain name, MUDDJEANS.COM and Complainant's trademark, MUDD.

Viewed as a trademark, the word "mud" is identical to the trademark MUDD. The word "mud" is the first portion of Respondent's domain name MUDGIRLIES.COM.

In the absence of a response, I conclude that the registered domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights.

RIGHTS AND LEGITIMATE INTERESTS

Complainant alleges that Respondent has no rights or legitimate interests with respect to the domain name at issue.

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.

Respondent has submitted no response alleging any rights or legitimate interests with respect to the domain name at issue.

In the absence of a response, I conclude that Respondent does not have rights or legitimate interests with respect to the domain name at issue.

BAD FAITH

Complainant alleges that Respondent's domain name has been registered and is being used in 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 Respondent has acquired the domain name primarily for the purpose of renting space to Complainant's competitors. Complainant alleges that Respondent provides links on its website www.mudgirlies.com to Complainant's competitors' websites, including Levi's Jeans, Seven for all Mankind Jeans, Eddie Bauer Jeans and other apparel manufacturers who market and sell products identical to those marketed and sold by Complainant.

When I entered www.mudgirlies.com in the browser on my computer, the browser opened a website called www.muddygirlies.com, which showed women in various degrees of undress, covered in mud. I did not see links to websites of Complainant's competitors. Nevertheless, in the absence of a response, I must accept Complainant's allegation that the website www.mudgirlies.com did, at one time, include links to websites of Complainant's competitors.

Complainant alleges that (a) consumers are likely to purchase competitors' goods, believing they are Complainant's goods, thereby resulting in a loss of sales to Complainant; (b) a consumer who wishes to purchase MUDD jeans or other MUDD products and visits the www.mudgirlies.com website in error may purchase products under the mistaken belief that those products are MUDD products or are otherwise associated with Complainant; and (c) Respondent's activities are designed to disrupt and harm Complainant's business by diverting potential consumers of MUDD jeans and other MUDD products to Complainant's competitors.

I generally find Complainant's allegations difficult to believe. An ordinary consumer would be unlikely to associate goods sold under trademarks of several competitors with goods sold under the MUDD trademark just because they are linked to a website called www.mudgirlies.com. Complainant has not presented any actual pages of Respondent's website that might give a clearer picture of the manner in which the goods might be confused with those of Complainant.

I can imagine a scenario in which a consumer does a search of the term "mudd jeans" or "mud jeans", looking for Complainant's products, and that this search yields a high ranking for Respondent's website. The consumer might go to Respondent's website and then decide to buy the products of a competitor rather than those of Complainant. While this may disrupt Complainant's business in some small way, it does not constitute "disrupting the business of a competitor" under the UDRP. Claimant has made no allegation that Respondent is a competitor of Claimant.

Arguably, however, such a use of the website might constitute bad faith under the UDRP as "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." The commercial gain may have come from the linking fees.

Respondent has apparently removed the website www.mudgirlies.com. An attempt to reach that website now resolves to another website called www.muddygirlies.com. In the absence of a response, I am inclined to believe that Respondent made this change in anticipation of this dispute, which may be an acknowledgment that Respondent was acting in bad faith.

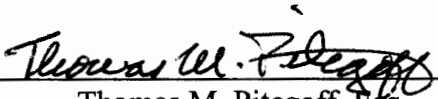
I therefore conclude that Respondent did register and use the domain name in bad faith, as that term is defined in the ICANN Policy.

CONCLUSION

In light of 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 interests 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 MUDGIRLIES.COM is hereby GRANTED. The domain name shall be transferred to Complainant.


Thomas M. Pitegoff, Esq.

July 27, 2005

Date