



CPR Institute for Dispute Resolution

File Number: CPR 0409
Date of Commencement: December 8, 2004
Domain Name: searchfast.com
Registrar: Network Solutions, LLC

COMPLAINANT

Name: Keywords, Inc.
Address: c/o Jack Johnson, 20422 Beach Blvd. #245
Tel: 714-374-9553 ext. 105
Fax: 714-908-7158
E-mail: jack@ilabmail.com

vs.

RESPONDENT

Name: Nathan Ewing
Address: 677 Argyle Road, Brooklyn, NY 11230
Telephone: 716-424-8840
Fax: N/A
E-mail: N/A

Before Thomas M. Pitegoff, Esq., Arbitrator

PROCEDURAL HISTORY

The Complaint in this dispute was filed with CPR Institute for Dispute Resolution (CPR) on December 8, 2004. After review for administrative compliance, CPR served the Complaint on Respondent. On December 29, 2004, CPR notified Respondent that Respondent failed to file a Response within the required time frame. On January 7, 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, SEARCHFAST.COM, was registered with Network Solutions, LLC on June 25, 1997. In registering the name with Network Solutions, LLC, an ICANN accredited registrar, Respondent agreed to submit to this forum to resolve any dispute concerning 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.

The Complaint in this dispute is extremely sketchy, lacking in detail and argumentation. Complainant's manner of establishing that Respondent's domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights was merely to submit a copy of a printout from the U.S. Patent and Trademark Office website search showing that Complainant had filed an application for federal registration of the trademark SEARCHFAST.COM for use as a "global internet search site, search engine." The date of first use as it appears on the trademark application was April 1, 2004.

Complainant did not present in this dispute any actual evidence of use of the mark as a search engine or anything else. The fact that the domain name SEARCHFAST.COM is not owned by Complainant makes it difficult to understand how Complainant might be using this trademark as an Internet search engine. Without the least explanation of the way in which Complainant is using the mark, I cannot conclude that Complainant has any actual rights in the mark.

Accordingly, I conclude that the registered domain name is not identical or confusingly similar to a trademark or service mark in which Complainant has rights.

RIGHTS AND LEGITIMATE INTERESTS

UDRP Paragraph 4(a) requires a complainant to prove that each of three elements is present. The second of these elements is that Respondent has no rights or legitimate interests with respect to the domain name at issue. Complainant in this dispute has not even alleged, let alone proved, that Respondent has no rights or legitimate interest in the domain name.

Because Complainant has made no allegation on this issue and there is no response from Respondent, I cannot rule 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's sole allegation of bad faith is that "the website is not being used under the name searchfast" and that Respondent is "squatting on the domain." Lack of use, by itself, does not constitute bad faith as defined in the UDRP.

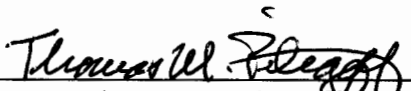
I therefore conclude that Respondent did not register and use the domain name in bad faith, as that term is defined in the ICANN Policy.

CONCLUSION

In light of my findings above that (a) the registered domain name is not identical or confusingly similar to Complainant's protected mark, (b) Complainant has made no showing that Respondent does not 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 Respondent.

REMEDY

Complainant's request to transfer ownership of Respondent's domain name SEARCH-FAST.COM to Complainant is hereby DENIED.



Thomas M. Pitegoff, Esq.

January 20, 2005

Date