



DECISION

Tianrong Internet Products and Services, Inc. v. Josue da Silva
Claim Number: FA0208000123866

PARTIES

Complainant is **Tianrong Internet Products and Services, Inc.**, Kew Gardens, NY, USA ("Complainant") represented by **Gordon E.R. Troy**. Respondent is **Josue da Silva**, Rio de Janeiro, BRAZIL ("Respondent").

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is **<phonecalls.com>**, registered with **Iholdings.com**.

PANEL

The undersigned certifies that he has acted independently and impartially and to the best of his knowledge has no known conflict in serving as Panelist in this proceeding.

James A. Crary as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum (the "Forum") electronically on August 21, 2002; the Forum received a hard copy of the Complaint on August 23, 2002.

On August 27, 2002, Iholdings.com confirmed by e-mail to the Forum that the domain name **<phonecalls.com>** is registered with Iholdings.com and that Respondent is the current registrant of the name. Iholdings.com has verified that Respondent is bound by the Iholdings.com registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On September 6, 2002, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of September 26, 2002 by which Respondent could file a Response to the Complaint, was transmitted to Respondent via e-mail, post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts, and to postmaster@phonecalls.com by e-mail.

Having received no Response from Respondent, using the same contact details and methods as were used for the Commencement Notification, the Forum transmitted to the parties a Notification of Respondent Default.

On October 15, 2002, pursuant to Complainant's request to have the dispute decided by a single-

member Panel, the Forum appointed James A. Crary as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the Forum has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent." Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the Forum's Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any Response from Respondent.

RELIEF SOUGHT

Complainant requests that the domain name be transferred from Respondent to Complainant.

PARTIES' CONTENTIONS

A. Complainant

The domain name <phonecalls.com> is identical to Complainant's PHONECALLS.COM mark.

Respondent has no rights or legitimate interests in the disputed domain name.

Respondent registered and used the disputed domain name in bad faith.

B. Respondent

Respondent failed to submit a Response.

FINDINGS

Complainant holds two registrations for PHONECALLS.COM with the United States Patent and Trademark Office ("USPTO"). Registration Number 2,596,406 was granted on November 20, 2001 in relation to computerized on-line ordering services in the field of telecommunications products and services, and is listed on the Principal Register of the USPTO. Registration Number 2,596,406 granted on July 16, 2002 in relation to providing telecommunications connections to a global computer network, telephone voice messaging services, and other communication technology is on the Supplemental Register of the USPTO.

Complainant is a holding company whose strategy is for the acquisition and development of domestic and international Internet service providers and related companies. In March 2000, Complainant was the owner of five development state Internet companies. Complainant purchased the domain name <phonecalls.com> on December 23, 1999 from a third-party, and proceeded to develop its business around the domain name. In March of 2000, the domain name <phonecalls.com> went live. Complainant properly renewed its domain name registration with Network Solutions Inc./Verisign on December 19, 2001 until December 23, 2006.

On April 30, 2002 the registrar, Network Solutions, Inc., released Complainant's domain name, making <phonecalls.com> open for registration by third parties, while at the same time continuing to show that it was properly registered domain name owned by Complainant. On April 30, 2002, DomainCollection.com registered the domain name <phonecalls.com>. Before Network Solutions Inc. did anything to attempt to correct the error DomainCollection.com had transferred the domain name registration to Respondent on July 9, 2002.

Respondent is offering the domain name for sale at DomainCollections.Com. Furthermore, Respondent's WHOIS information states, "THIS-DOMAIN-IS-FOR-SALE" and "EMAILUS-DOMAINSALESATDOMAINCOLLECTION.COM." Respondent's website features

advertisements, links to other websites, and pop-up advertisements.

DISCUSSION

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

In view of Respondent's failure to submit a Response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(e), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules.

Paragraph 4(a) of the Policy requires that the Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

Identical and/or Confusingly Similar

Complainant has established that it has rights to PHONECALLS.COM through its two trademark registrations with the USPTO.

Respondent's domain name is identical to Complainant's mark because the <phonecalls.com> domain name incorporates the entirety of Complainant's mark. Complainant's mark PHONECALLS.COM includes the generic top-level domain “.com,” therefore, the disputed domain name has absolutely no distinguishing characteristics from Complainant's mark. *See Little Six, Inc. v. Domain For Sale*, FA 96967 (Nat. Arb. Forum Apr. 30, 2001) (finding that <mysticlake.net> is plainly identical to Complainant's MYSTIC LAKE trademark and service mark); *see also Interstellar Starship Services Ltd. v. EPIX, Inc.*, 983 F.Supp. 1331, 1335 (D.Or. 1997) (<epix.com> "is the same mark" as EPIX).

The Panel finds that Policy ¶ 4(a)(i) has been satisfied.

Rights or Legitimate Interests

Respondent has failed to come forward with a Response. Therefore, it is presumed that Respondent has no rights or legitimate interests in the disputed domain name. *See Pavillion Agency, Inc. v. Greenhouse Agency Ltd.*, D2000-1221 (WIPO Dec. 4, 2000) (finding that Respondents' failure to respond can be construed as an admission that they have no legitimate interest in the domain names).

Furthermore, when Respondent fails to submit a Response the Panel is permitted to make all inferences in favor of Complainant. *See Talk City, Inc. v. Robertson*, D2000-0009, (WIPO Feb. 29, 2000) (“In the absence of a response, it is appropriate to accept as true all allegations of the Complaint”).

Respondent is using the disputed domain name, identical to Complainant's mark, in order to advertise different Internet services and barrage Internet users with pop-up advertisements. This type of use tarnishes Complainant's mark and infringes on Complainant's goodwill, and therefore is not considered to be in connection with a bona fide offering of goods or services pursuant to

Policy ¶ 4(c)(i), or a legitimate, noncommercial or fair use pursuant to Policy ¶ 4(c)(iii). See *Big Dog Holdings, Inc. v. Day*, FA 93554 (Nat. Arb. Forum Mar. 9, 2000) (finding no legitimate use when Respondent was diverting consumers to its own website by using Complainant's trademarks); see also *FAO Schwarz v. Zuccarini*, FA 95828 (Nat. Arb. Forum Dec. 1, 2000) (finding no rights or legitimate interests in the domain names <faoschwartz.com>, <foaschwartz.com>, <faoshwartz.com>, and <faoswartz.com> where Respondent was using these domain names to link to an advertising website).

Furthermore, there is no evidence on record, and Respondent has not come forward with any evidence to prove that it is commonly known as PHONECALLS.COM, or <phonecalls.com>. Therefore, Respondent has failed to establish that it has rights or legitimate interests in the disputed domain name pursuant to Policy ¶ 4(c)(ii). See *Gallup Inc. v. Amish Country Store*, FA 96209 (Nat. Arb. Forum Jan. 23, 2001) (finding that Respondent does not have rights in a domain name when Respondent is not known by the mark); see also *Broadcom Corp. v. Intellifone Corp.*, FA 96356 (Nat. Arb. Forum Feb. 5, 2001) (finding no rights or legitimate interests because Respondent is not commonly known by the disputed domain name or using the domain name in connection with a legitimate or fair use).

The Panel finds that Policy ¶ 4(a)(ii) has been satisfied.

Registration and Use in Bad Faith

Based on Respondent's WHOIS information it can be inferred that Respondent registered the disputed domain name with the intent of selling it. Respondent's WHOIS information states, "THIS-DOMAIN-NAME-IS-FOR-SALE" and "EMAILUS-DOMAINSALESATDOMAINCOLLECTION.COM." Registration of a domain name primarily for the purpose of selling, renting or transferring the registration is evidence of bad faith registration and use pursuant to Policy ¶ 4(b)(i). See *Euromarket Designs, Inc. v. Domain For Sale VMI*, D2000-1195 (WIPO Oct. 26, 2000) (finding "the manner in which the Respondent chose to identify itself and its administrative and billing contacts both conceals its identity and unmistakably conveys its intention, from the date of the registration, to sell rather than make any use of the disputed domain name"); see also *Parfums Christain Dior v. QTR Corp.*, D2000-0023 (WIPO Mar. 9, 2000) (finding bad faith where Respondent's WHOIS registration information contained the words, "This is domain name is for sale").

Furthermore, it can be inferred that Respondent is making a profit from the Internet traffic that is diverted to its website because Internet users are expecting to find Complainant's website at the disputed domain name. Respondent displays pop-up advertisements and links to other websites at the domain name. The use of Complainant's mark in order to create a likelihood of confusion for Respondent's commercial gain is evidence of bad faith use pursuant to Policy ¶ 4(b)(iv). See *Luck's Music Library v. Stellar Artist Mgmt.*, FA 95650 (Nat. Arb. Forum Oct. 30, 2000) (finding that Respondent had engaged in bad faith use and registration by linking the domain name to a website that offers services similar to Complainant's services, intentionally attempting to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with Complainant's marks); see also *Drs. Foster & Smith, Inc. v. Lalli*, FA 95284 (Nat. Arb. Forum Aug. 21, 2000) (finding bad faith where Respondent directed Internet users seeking Complainant's site to its own website for commercial gain).

The Panel finds that Policy ¶ 4(a)(iii) has been satisfied.

DECISION

Having established all three elements required under the ICANN Policy, the Panel concludes that

the requested relief shall be hereby **GRANTED**.

Accordingly, it is Ordered that the domain names <**phonecalls.com**>, be **TRANSFERRED** from Respondent to Complainant.

James A. Crary, Panelist
Dated: October 22, 2002

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